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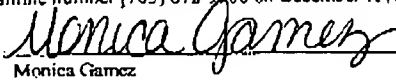
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From: Monica Gamez Legal Assistant to Wing Yan Mok	No. of Pages Including Cover Sheet: 32
Message: Enclosed herewith: <ul style="list-style-type: none">• Transmittal Document; and• Appeal Brief.	
Re: Application No. 09/895,095 Attorney Docket No: AUS920010447US1	
Date: Monday, December 13, 2004	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Banerjee et al.**Serial No.: **09/895,095**Filed: **June 29, 2001**For: **Digital Rights Management**§
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§Group Art Unit: **3621**Examiner: **Bayat, Bradley B.**Attorney Docket No.: **AUS920010447US1****35525**PATENT TRADEMARK OFFICE
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By:	 Monica Gamez

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- Appeal Brief (37 C.F.R. 41.37).

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Respectfully submitted,


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Docket No. AUS920010447US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Banerjee et al.**

Serial No. 09/895,095

Filed: June 29, 2001


For: Digital Rights Management

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§ Group Art Unit: 3621
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§ Examiner: Bayat, Bradley B.
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By:


Monica Gamez

APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on October 15, 2004.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

REAL PARTIES IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS**A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1-35

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: NONE
2. Claims withdrawn from consideration but not canceled: NONE
3. Claims pending: 1-35
4. Claims allowed: NONE
5. Claims rejected: 1-35
6. Claims objected to: NONE.

C. CLAIMS ON APPEAL

The claims on appeal are: 1-35.

STATUS OF AMENDMENTS

There are no amendments after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention provides a method of augmenting digital rights management (Specification, page 4, lines 1-5), the method comprising associating a first field with an electronic property, wherein the first field identifies a current owner of the electronic property (Specification, page 12, lines 5-13, Figure 4, element 402); associating a second field with the electronic property, wherein the second field includes a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners (Specification, page 12, line 25 to page 13, line 3, Figure 4, element 403); and wherein access control software allows access to the electronic property only upon verification that a user satisfies specified requirements for access (Specification, page 12, lines 1-3, Figure 9, element 902), and wherein the specified requirements include the user being listed as the current owner in the first field (Specification, page 12, lines 10-13, Figure 9, element 905). These features are recited in independent claims 1, 17 and 33 of the present invention.

The present invention also provides a method for notifying the electronic property's manufacturer in case of property rights violations (Specification, page 12, lines 17-20, Figure 9, element 904). These features are recited in claims 3 and 19 of the present invention.

In addition, the present invention provides a method that if ownership of the electronic property is transferred from the current owner to a subsequent owner in the first field, replacing the current owner's name with the subsequent owner's name (Specification, page 12, line 30 to page 13, line 3); and in the second field, appending an entry with information about the subsequent owner (Specification, page 13, lines 20-25, Figure 6, element 604), wherein the information about the subsequent owner includes a time period of ownership for the subsequent owner (Specification, page 13, lines 15-21, Figure 6, element 603). These features are recited in claims 4, 20 and 34 of the present invention.

Furthermore, the present invention provides a method of allowing access to the property by the subsequent owner only after the current owner has electronically signed an entry identifying the subsequent owner (Specification, page 13, lines 20-25, Figure 6, element 604, 605). These features are recited in claims 5 and 21 of the present invention.

Moreover, the present invention provides a method of sending notice of the transfer of ownership to the electronic property's manufacturer (Specification, page 14, lines 5-10, Figure 6, element 606). These features are recited in claims 7 and 23 of the present invention.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are:

Claims 1-35 are rejected as being allegedly unpatentable over Ginter (U.S. Patent No. 5,910,987 A1) in view of Christiano (U.S. Patent No. 5,671,412) under 35 U.S.C. §103(a).

ARGUMENT

I. 35 U.S.C. 103(a), Alleged Obviousness, Claims 1-35

The Final Office Action rejects claims 1-35 under 35 U.S.C. 103(a) as being allegedly unpatentable over Ginter (U.S. Patent No. 5,910,987 A1) in view of Christiano (U.S. Patent No. 5,671,412) under 35 U.S.C. §103(a). This rejection is respectfully traversed.

As to claims 1, 4, 33 and 34, the Final Office Action states:

As per claims 1, 4, 33, 34, Ginter discloses a method of digital rights management, comprising: associating a field with an electronic property, wherein the first field identifies a current owner of the electronic property (column 144, line 12 – column 145, line 49); and wherein access control software allows access to the property only upon verification that a user satisfies specified requirements for access (column 82-83; column 135, lines 20-34). Ginter does not explicitly disclose including a field wherein a list of prior owners is compiled. Christiano, however, teaches a license management system for software application, wherein software ownership history is compiled in addition to several identifying fields with regards to various aspects of digital ownership of the property (column 3, line 10 – column 5, line 18). One of ordinary skill in the art at the time of the claimed invention would recognize that it would be obvious to record ownership rights to electronic property, because unlike tangible property, electronic property can be easily transferred between multiple parties and in order to protect the rights of the current owner, it would be useful to keep a record of all owners to ensure that the proper owner is accessing the property, as per teachings of Christiano (columns 6-7; figures 1-8 and associated text).

Final Office Action dated July 15, 2004, pages 2-3.

Independent claim 1, which is representative of claims 17 and 33, reads as follows:

1. A method of augmenting digital rights management, the method comprising:
associating a first field with an electronic property, wherein the first field identifies a current owner of the electronic property; and
associating a second field with the electronic property, wherein the second field includes a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners; and
wherein access control software allows access to the electronic property only upon verification that a user satisfies specified requirements for access, wherein the specified requirements include the user being listed as the current owner in the first field.
(emphasis added)

Neither Ginter nor Christiano teaches or suggests associating a second field with an electronic property, wherein the second field includes a list of owners having an order according

to a historical order of transfer of rights to the electronic property between a plurality of previous owners.

As discussed in the Abstract, Ginter is directed to systems and methods for electronic commerce including secure rights protection to ensure that information is accessed and used only in authorized ways, and maintain the integrity, availability, and/or confidentiality of the information. Secure subsystems used with electronic appliances provide a distributed virtual distribution environment (VDE) that may enforce a secure chain of handling and control, for example, to control and/or meter or otherwise monitor use of electronically stored or disseminated information. Such a virtual distribution environment may be used to protect rights of various participants in electronic commerce and other electronic or electronic-facilitated transactions. Secure distributed and other operating system environments and architectures, employing, for example, secure semiconductor processing arrangements that may establish secure, protected environments at each node. These techniques may be used to support an end-to-end electronic information distribution capability that may be used, for example, utilizing the "electronic highway."

As discussed in the Abstract, Christiano is directed to a software license management system that includes a license server, which initializes a license database by receiving a package license description that includes component license descriptions for component software products in a package. License records are created in the license database for components and suite packages, where each record includes a number of licenses available to be checked out. A client computer can request a license for a component product in a package. A license is granted to the client when the client is allowed to receive the license according to a license policy. In addition, the license record includes a number of modifiers, including an overdraft quantity, a fail safe indicator, a minimum license quantity, and a capacity indicator.

While the Examiner admits in the Final Office Action that Ginter does not teach or suggest a field that includes a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners, the Examiner alleges that Christiano teaches a compilation of software ownership history at column 3, line 10 to column 5, line 18, and columns 6 and 7. However, in these sections, Christiano merely teaches that in order to determine if a client is granted a license, the server checks if the number of licenses requested plus licenses in use by clients in the user list is less than or equal to the

available number of licenses for the requested product (Column 4, lines 29-34). Thus, the license server grants a license to a client based on the number of license available minus the number of license in use according to a user list and the number of license requested.

Neither the license record nor the user list of Christiano includes a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners. Figure 2b of Christiano, which illustrates a package certificate, is shown below:

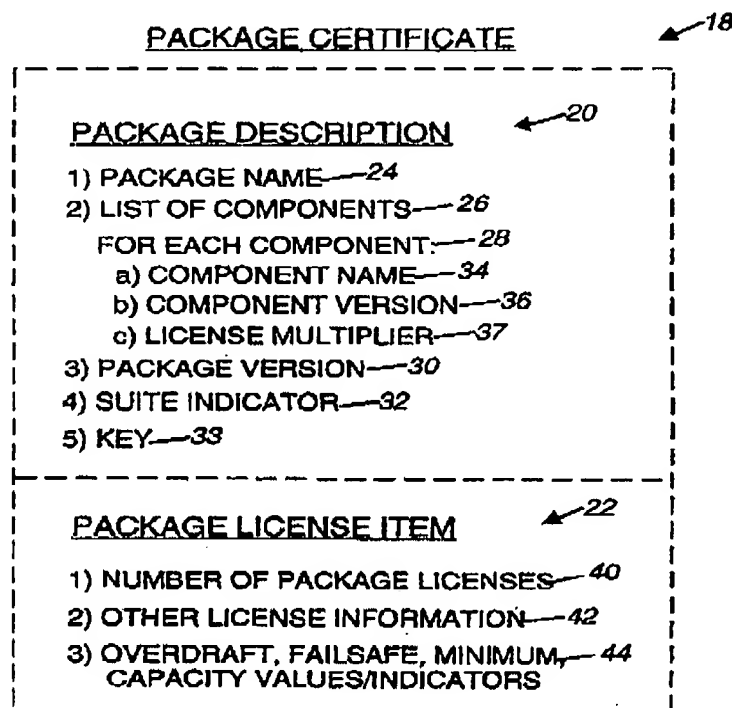


Figure 2b

As shown in Figure 2b, package certificate 18 identifies package license item 22, which includes a number of package license portion 40, other information portion 42 and options portion 44. Number of package license portion 40 stores the number of available package licenses for that package. Other information portion 42 stores other licensing information, such as a data of expiration of the license record and a key for verifying that license item 22 has not been tampered with. Options portion 44 stores optional license modifier information, including

an overdraft quantity, a failsafe indicator, a minimum quantity, and a capacity indicator. None of the above portions in package certificate 18 includes a list of owners for the package, let alone a historical order of transfer of rights to the electronic property. Therefore, the package certificate from which the license record is created does not include a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners, as recited in claims 1, 17 and 33 of the present invention.

The user list of Christiano also does not include a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners, as recited in claims 1, 17, and 33 of the present invention. At column 19, lines 50-55, Christiano teaches that a user list is a list of requesters that have requested the license record in question and are currently using a license, and includes the number of units that each such requester currently has checked out. Thus, the user list of Christiano only includes a list of users that are currently using a software product, who are current owners. The user list does not include a list of owners having an order according to a historical order of transfer of rights to the electronic property between a plurality of previous owners. Therefore, Christiano fails to teach or suggest the features as recited in claims 1, 17 and 33 of the present invention.

The Final Office Action also alleges that one of ordinary skill in the art would recognize at the time the present invention was made that it would have been obvious to record ownership rights to electronic property, because unlike tangible property, electronic property can be easily transferred between multiple parties and in order to protect the rights of the current owner, it would be useful to keep a record of all owners to ensure that the proper owner is accessing the property, as per teachings of Christiano. Appellants respectfully disagree.

There is no teaching or suggestion in either Ginter or Christiano to have a list of owners having an order according to a historical order of transfer of rights to an electronic property between a plurality of previous owners. Ginter only teaches a permission record header that includes an original distributor ID field, which specifies who originally distributed the permission record and/or corresponding object, and a last distributor ID field that specifies who the last distributor of the permission record and/or the object was. While Ginter teaches keeping records of who the original and the last distributor was using these two IDs, these two IDs do not provide a list of owners having an order according to a historical order of transfer of rights to the

electronic property between a plurality of previous owners.

Using Ginter's last distributor ID field, if a new distributor becomes the last distributor, the current distributor in the last distributor field will be replaced with the new distributor. There is no chain of ownership or ownership history stored in the last distributor ID field. Even if the original distributor ID field is to be combined with the last distributor ID field to form a list, the list would still not be a list of owners having an order according to historical order of transfer of rights to the electronic property between a plurality of previous owners, because all the intermediate distributors between the original distributor and the last distributor within the history of transfers of rights would be lost. Only the last distributor is identified in the field.

Therefore, Ginter is only interested in teaching a field that includes either an original distributor or the last distributor of a permission record. Ginter is not interested in teaching a historical order of transfer of rights to an electronic property between a plurality of previous owners. Christiano also is not interested in teaching a field that has a historical order of transfer of rights to an electronic property. As discussed above, Christiano is only interested in teaching a user list that identifies a list of users currently using a software product or a license record that identifies the number of licenses available. Christiano is not interested in teaching a list of owners having a historical order of transfer of rights to an electronic property between a plurality of previous owners.

Therefore, a person of ordinary skill in the art would have been led to either modify or combine the teachings of Ginter and Christiano to arrive at the features of the present invention. In addition, even if a person of ordinary skill in the art were to combine the teachings of Ginter and Christiano, the resulting combination would still not be a list of owners having an order according to a historical order of transfer of rights to an electronic property between a plurality of previous owners. Rather, the resulting combination would be a field that includes an original distributor and a current distributor or owner, since the last distributor is replaced with the current distributor according to Ginter. There is still no historical record of transfer of rights to the electronic property in the combination.

Accordingly, Appellants respectfully request the withdrawal of the rejection of claims 1, 17, and 33 as is required under 35 U.S.C. § 103(a). At least by virtue of their dependency on claims 1, 17, and 33, neither Ginter nor Christiano teaches or suggests the features of dependent claims 2-16, 18-32, and 34-35. Accordingly, Appellants respectfully request withdrawal of the

rejection of claims 1-35 under 35 U.S.C. § 103(a).

In addition, neither Ginter nor Christiano teaches or suggests the specific features as recited in dependent claims 2-16, 18-32, and 34-35. For example, with regard to dependent claim 3, which is representative of claim 19 with regard to similarly recited subject matter, Ginter does not teach notifying the electronic property's manufacturer in case of property rights violations. The Final Office Action alleges that Ginter teaches these features at column 42, lines 4-16, which reads as follows:

Support certificate processes that ensure authorized interoperability between various VDE installations so as to prevent VDE arrangements and/or installations that unacceptably deviate in specification protocols from other VDE arrangements and/or installations from interoperating in a manner that may introduce security (integrity and/or confidentiality of VDE secured information), process control, and/or software compatibility problems. Certification validates the identity of VDE installations and/or their components, as well as VDE users. Certification data can also serve as information that contributes to determining the decommissioning or other changes related to VDE sites.

In the above section, Ginter teaches that security of the VDE secured information is ensured for authorized access only by using certification, which validates the identity of the VDE installations and users. However, certification in Ginter does not notify the electronic property's manufacture in case of property rights violation. At column 128-129, Ginter teaches a Secure Processing Unit (SPU) that maintains an audit trail in a reprogrammable non-volatile memory within the SPU and/or in a secure database. The audit trail may consist of a security summary of SPU use. When a request is made to the SPU, it logs the request as having occurred and then notes whether the request succeeded or failed. Failure information, which includes an object ID, a User ID, the type of failure and the time of failure is saved and analyzed to detect cracking attempts or to determine patterns of usage outside expected norms. One of the basic structures, the event summary structure, for which summary service is used is VDE administrator specific and keeps track of events. The event summary structure may be maintained and audited during period contact with VDE administrators. Thus, Ginter teaches a basic structure for auditing usage of the content. VDE administrators may register with the event summary structure to track failures and events. Ginter does not teach that the event summary structure notifies the electronic property's manufacturer in case of property rights violations. Ginter only saves the failure

information for analysis by the VDE administrators. Ginter does not notify the manufacturer of the property.

Christiano also does not teach or suggest notifying the electronic property's manufacturer in case of property rights violations. At column 17, lines 15-33, Christiano teaches a fail safe indicator in the license record that allows licenses to be checked out when no licenses are available during failures. At column 18, lines 28-44, Christiano teaches that if the license of a requested product is not available, the system checks if the license of the requested product is a fail safe license. "Fail safe" indicates to the requesting client that the requested product is not available, but the client is allowed to use the product. If the license of the requested product is not a fail safe license, the status is set to "unavailable" and is output to the requesting client. If this requested license is a fail safe license, the status is set to "fail safe" and is output to the requesting client computer system. Thus, Christiano merely teaches notifying the client who requested the license if a failure occurs to the license management system. Christiano does not teach notifying the manufacturer of the software product or license in case of a violation. Therefore, Christiano also does not teach or suggest the feature of claims 3 and 19 of the present invention.

With regard to dependent claim 4, which is representative of claims 20 and 34 with regard to similarly recited subject matter, Ginter does not teach that if ownership of the electronic property is transferred from the current owner to a subsequent owner, appending an entry with information about the subsequent owner in the second field, wherein the information about the subsequent owner includes a time period of ownership for the subsequent owner. The Final Office Action alleges that Ginter teaches these features at column 26 and associated figures.

At column 26, Ginter teaches that control information components contribute independently to secure communication between each control information influencing VDE participant's VDE installations and may require certification for use with a given application, where such certification was provided by a certification service manager for the VDE arrangement who ensures secure interoperability and/or reliability between appliances and submitted control methods. However, Ginter does not mention anything about appending an entry in the second field associated with the electronic property with information about the subsequent owner that includes a time period of ownership for the subsequent owner.

To the contrary, at column 214, Ginter teaches the use of a "time aged" key to encrypt or decrypt a set of information for a limited period of time, thus requiring re-registration or the receipt of new permissions or the passing of audit information, without which new keys are not provided for a user use. "Time aged" keys allows content creators/providers to impose a limitation (c.g., site based and/or time based) on information access that is "external of" or auxiliary to the permission provided by one or more permission records. Thus, Ginter teaches using a "time-aged" key to encrypt or decrypt the electronic property for a limited period of time, in order to prevent access to the information after a time period has expired.

In addition, at columns 227-228, Ginter teaches that transfer of a VDE object is a special case in which all of permissions and/or budgets for a VDE object are redistributed to a different protected processing environment (PPE). Some VDE objects may require that all object-related information be delivered (e.g. it is possible to sell all rights to the object). Therefore, Ginter teaches that all permissions, including the time-aged key that defines a time period of access, are transferred to the new VDE object if the ownership of the VDE object is transferred. Ginter does not teach appending an entry, to a second field associated with the electronic property, with information about the subsequent owner that includes a time period of ownership for the subsequent owner, if ownership of the electronic property is transferred from one VDE owner to another.

Christiano also does not teach or suggest that if ownership of the electronic property is transferred from the current owner to a subsequent owner, appending an entry with information about the subsequent owner in the second field, wherein the information about the subsequent owner includes a time period of ownership for the subsequent owner. As discussed above in arguments presented in claims 1, 17, and 33, Christiano only teaches a user list that has a list of users who are currently using the software product and the number of units each user currently has checked out. Christiano does not teach appending an entry with information about the subsequent owner in the second field. At column 20, lines 8-10, Christiano teaches that the requester is added to the user list if there are sufficient license units available for the requester. That is, the requester is considered to have checked out the requested number of license units. Thus, the user list only contains users who currently checked out the software product. In other words, the user list only includes current users of the software product. The user list is not appended with an entry identifying subsequent users, because the previous users are no longer in

the user list once the software product is no longer checked out. Therefore, there are no entries in the user list to append to according to Christiano. Thus, Christiano also fails to teach or suggest the features in claims 4, 20, and 34 of the present invention.

With regard to dependent claim 5, which is representative of claim 21 with regard to similarly recited subject matter, Ginter does not teach allowing access to the electronic property by the subsequent owner only after the current owner has electronically signed an entry identifying the subsequent owner. The Final Office Action alleges that Ginter teaches these features at columns 19, 21 and 22. At these columns, Ginter teaches a VDE content container that is used to define the general nature of the VDE capabilities that will and/or may apply to certain electronic information. A VDE content container is an object that contains both content and certain control information related to the use of the object's content. A creating party may make the VDE container available to other parties. The VDE of Ginter also sufficiently impedes unauthorized and/or uncompensated use of electronic information and/or appliances through the use of secure communications, storage and transaction management technologies. The VDE also supports security architecture for transaction control, auditing, reporting, related communications and information storage.

However, as discussed above, when ownership of a VDE object is transferred, all permissions and/or budgets are redistributed to a different VDE. In addition, Ginter teaches, at column 228, that if some VDE objects prohibits the transfer of ownership, the original provider for a VDE object may need to be contacted by the new owner, informed of the transfer, and validated using an authorization shared secrets that accompanies reauthorization, before transfer of ownership can be completed. Thus, Ginter teaches an authorization of shared secrets between the current owner and the subsequent owner as a way to complete an ownership transfer. This is contrary to the presently claimed invention, by which access to an electronic property is allowed only after the current owner electronically signs an entry identifying the subsequent owner. Therefore, Ginter does not teach the features of claim 5 of the present invention.

Christiano also does not teach or suggest allowing access to the electronic property by the subsequent owner only after the current owner has electronically signed an entry identifying the subsequent owner. As discussed above in arguments presented for claims 1, 17, and 33, the client is granted a license for the package, if the number of licenses requested plus licenses in use by clients in the user list is less than or equal to the available number of licenses for the requested

product. Thus, according to Christiano, access to the package by the users are granted based on the number of licenses available, not after the current owner electronically signed the entry identifying the subsequent owner. Christiano does not even mention electronically signing an entry, let alone signing an entry identifying the subsequent owner. Therefore, Christiano also fails to teach or suggest the features of claims 5 and 21 of the present invention.

With regard to claim 7, which is representative of claim 23 with regard to similarly recited subject matter, Ginter does not teach sending notice of the transfer of ownership to the electronic property's manufacturer. The Final Office Action alleges that Ginter teaches these features at columns 286-289. However, Ginter only teaches at these columns that a provider may add control information that enables and/or limits the addition, modification, hiding and/or deletion of said content.

At column 286, lines 10-33, Ginter teaches that the control information includes nature and/or location of content that may be added, hidden, modified and/or deleted; portions of content that may modified, hidden, deleted and/or added to; required secure control information over subsequent VDE container content usage in a chain of control and/or locally to added, hidden, and/or modified content; requirements that provider-specified notices and/or portions of content accompany added, hidden, deleted and/or modified content and/or the fact that said adding, hiding, modification and/or deletion occurred; secure management of limitations and/or requirements concerning content that may be removed, hidden and/or deleted from content, including the amount and/or degree of addition, hiding, modification and/or deletion of content; providing notice to a provider or providers that modification, hiding, addition and/or deletion has occurred and/or the nature of said occurrence; and other control information concerned with modification, addition and/or deleting provider content (emphasis added).

Thus, Ginter only teaches that notices are provided to the provider when the content is modified, hidden, added or deleted and/or nature of these occurrences. Ginter does not teach sending notice to the electronic property's manufacturer of the transfer of ownership, as recited in claim 7. To the contrary, at column 227, Ginter teaches an electronic appliance authorized to redistribute an object may create an administrative object containing a budget or rights less than or equal to the budget or rights that it owns. Some administrative objects may be sent to other PPEs. Thus, Ginter teaches that the current owner directly notifies administrative objects, which

includes budgets or rights of the VDE object, to the subsequent owner. The VDE of Ginter does not notify the current owner or manufacturer of the electronic property of a transfer of ownership.

Christiano also does not teach or suggest sending notice of the transfer of ownership to the electronic property's manufacturer. Christiano does not teach what happens when ownership of the electronic property is transferred, since Christiano is only interested in a system for granting licenses. In addition, as discussed above in arguments presented for claims 3 and 19, Christiano only teaches that if the license is not available, a status of "unavailable" is returned to the requesting client if the license of the requested product is not a fail safe license. Otherwise, if the requested license is a fail safe license, the status is set to "fail safe" and is output to the requesting client computer system. Thus, Christiano's system does not notify the manufacturer of the software product if the license is not available. It only notifies the client requesting the license. Therefore, Christiano also does not teach or suggest the features of claims 7 and 23 of the present invention.

In view of the above, Appellants respectfully submit that neither Ginter nor Christiano teaches or suggests the specific features of claims 2-16, 18-32, and 34-35 in addition to their dependency to claims 1, 17, and 33. Accordingly, Appellants respectfully request the withdrawal of rejection to claims 2-16, 18-32, and 34-35 under 35 U.S.C. § 103(a).

CONCLUSION

For the reasons stated above, Appellants respectfully submit that the rejection under 35 U.S.C. §103(a) of claims 1-35 has been overcome. Accordingly, Appellants respectfully request that the Board of Patent Appeals and Interferences overturn the rejections set forth in the Final Office Action.

Respectfully submitted,



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